

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
DECEMBER SESSION, 1996

FILED

February 27, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

NOAH H. LUNDY,

Appellant

vs.

STATE OF TENNESSEE,

Appellee

No. 03C01-9603-CR-00112

KNOX COUNTY

Hon. Ray L. Jenkins, Judge

(Petition for Writ of Habeas Corpus)

For the Appellant:

Noah Harrison Lundy #72638
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For the Appellee:

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Noah H. Lundy, appeals the order of the Knox County Criminal Court dismissing his *pro se* petition for post-conviction relief alleging, *inter alia*, insufficient evidence and an excessive and disproportionate sentence. The trial court dismissed the petition as being time-barred.

This is the appellant's third petition for post-conviction relief. In 1973, the appellant was convicted of one count of rape and one count of a crime against nature. He received a sentence of one hundred and twenty years for the rape conviction and fifteen years for the crime against nature conviction. His convictions and sentences were affirmed on direct appeal. State v. Lundy, 521 S.W.2d 591 (Tenn. Crim. App. Aug. 30, 1974), perm. to appeal denied, (Tenn. Mar. 10, 1975). On May 12, 1975, the appellant filed his first petition for post-conviction relief. See Lundy v. State, 752 S.W.2d 98, 99 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1987). The trial court denied the petition. The appellant did not appeal the dismissal. On February 15, 1979, the appellant filed a petition for writ of habeas corpus in the federal District Court for the Middle District of Tennessee. Ultimately, this writ was dismissed by the United States Supreme Court. Rose v. Lundy, 455 U.S. 509, 102 S.Ct. 1198 (1982). After the federal habeas petition was dismissed, the appellant filed a second petition for post-conviction relief on July 6, 1982. The trial court dismissed the second petition. On December 1, 1987, this court affirmed the dismissal, and, on March 14, 1988, the supreme court denied permission to appeal. Lundy v. State, 752 S.W.2d at 98. On November 28, 1995, the appellant filed the present petition for post-conviction relief. The post-conviction court denied relief on November 30, 1995, as the petition was barred by the statute of limitations.

Effective July 1, 1986, Tenn. Code Ann. § 40-30-102 (1987 Supp.)

(repealed 1995) limited the filing of post-conviction petitions to "within three years of the date of the final action of the highest state appellate court to which an appeal is taken." See Burford v. State, 845 S.W.2d 204 (Tenn. 1992) (holding that three year statute of limitation complies with due process requirements). The petition now before this court was filed over twenty years after the date of his conviction. However, as the new statute was to be applied prospectively, the appellant had until July 1, 1989, to file a petition for post-conviction relief. See State v. Masucci, 754 S.W.2d 90, 91 (Tenn. Crim. App. 1988). Moreover, we conclude that the provisions of the new Post-Conviction Procedure Act, effective May 10, 1995, have no application to the case before us. See Tenn. Code Ann. § 40-30-201 *et seq.* (1996 Supp.). Thus, the petition, filed six years after this date, is time-barred.

Accordingly, we find no error of law mandating reversal. The trial court's dismissal of the appellant's petition is affirmed in accordance with Tenn. Ct. Crim. R. App. 20.

DAVID G. HAYES, Judge

CONCUR:

DAVID H. WELLES, Judge

THOMAS T. WOODALL, Judge